

CALIFORNIA COASTAL COMMISSION

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W10b

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STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION

Appeal number **A-3-MCO-04-054, Sunridge Views**

Applicants Mr. Steve Bradshaw

Agent Mr. John Bridges, Law Firm of Fenton and Keller

Appellants Mary Aken, Law Office of William J. Yeates, representing Friends, Artists and Neighbors (FANS) of Elkhorn Slough; Gary Patton, Executive Director, LandWatch, Monterey County; and Commissioners Sara Wan and Mike Reilly

Local government Monterey County

Local decision Resolution 04-256, for PLN990391, Approved with conditions, July 13, 2004

Project location 250 Maher Road (south of Tarpey Road), North Monterey County (APN 127-252-009).

Project description Coastal Development permit and Standard Subdivision of a 25 acre parcel into 10 lots ranging in size from 1 to 7.8 acres, 2,000 cubic yards of grading, development of a mutual water system, construction of two water tanks; demolition of an existing mobile home, barn, and greenhouse and conversion of an existing mobile home to a senior citizens unit.

Local approval The Monterey County Board of Supervisors approved a Combined Development Permit, Resolution 04-256 (PLN990391), for the project on July 13, 2004.

File documents Monterey County certified Local Coastal Program, including North County Land Use Plan; Final Local Action Notice 3-MCO-04-240

Staff recommendation ... **Substantial Issue Exists**

Staff Note: The applicant has not waived the 49-Day appeal hearing requirement. Therefore the Commission must act on substantial issue at the September hearing.

Summary of staff recommendation: Monterey County approved a Coastal Development Permit to subdivide a 25-acre parcel in North Monterey County (Elkhorn Slough watershed) into 10 lots ranging in size from 1 to 7.8 acres. The approval also allows 2,000 cubic yards of grading, development of a



California Coastal Commission
September 8, 2004 Meeting in Eureka

Staff: K. Cuffe Approved by:

mutual water system, construction of two water tanks, demolition of a mobile home, barn, and greenhouse, and conversion of an existing mobile home to a senior citizens unit.

Appeals, submitted by Commissioners Wan and Reilly, Friends, Artists, and Neighbors (FANS) of Elkhorn Slough, and LandWatch, Monterey County (LandWatch), allege that the project is inconsistent with the LCP due to (1) inadequate protection of groundwater resources; (2) inadequate long-term water supply and quality due to overdrafted aquifers and the potential for nitrate contamination; (3) potentially adverse impacts to adjacent environmentally sensitive habitat areas; (4) impacts to visual resources; (5) conflicts with the residential zoning density requirements; and (6) procedural errors. Staff is recommending that the Commission find that only the first three contentions raise a substantial issue with respect to conformity with the Monterey County LCP, and take jurisdiction over the coastal development permit for the project.

First, the County's approval **raises a substantial issue with regards to protecting groundwater resources**. The LCP requires protection of groundwater resources, especially within the North County where severe and chronic groundwater overdrafts have led to saltwater intrusion and the need to abandon previously-functional water supply wells. The North County LUP requires, among other things, that:

- New developments be controlled to a level that can be served by an identifiable, available, and long-term water supply (Key Policy 2.5.1);
- Development levels that generate water demand exceeding safe yield of local aquifers are only allowed once additional water supplies are secured (No Co LUP Policy 2.5.2.3);
- New development be phased so that existing water supplies are not committed beyond their safe long-term yields (No Co LUP Policies 2.5.2.3, 4.3.5.7, 4.3.6.D.5); and,
- The County should reduce the remaining build-out to limit groundwater use to the safe-yield level or, if required, in order to protect agricultural water supplies (No Co LUP policy 2.5.3.A.2).

Taken together the LCP provisions seek to ensure that any groundwater extraction protects groundwater aquifers, wetlands and streams, and agricultural water supplies.

While the applicant's hydrologic study estimates a net aquifer overdraft reduction of 24 af/yr by conversion of the current agricultural use on the site to expanded residential use, the North Highlands aquifer is already overdrafted by 1,860 acre feet (or 39 percent) beyond its annual safe yield. The reduction proposed by the subject project will only account for about 1 percent reduction of the severe and chronic overdraft conditions in the North Highlands sub-area, and even this minimal reduction may be ephemeral. In contrast, the expected residential use will require a long-term commitment to a permanent water supply, which is currently not available. The Pajaro Valley Water Management Agency (PVWMA) and Salinas Valley Water Project (SVWP) projects designed to improve long-term water supplies are still in the planning stage and cannot be relied upon as a future long-term water supply until they are constructed and have shown that they have restored groundwater resources and can provide an adequate water supply for existing and new planned development without overdrafting the



basin. Without an identifiable, available long-term water supply, the project will continue to draw from the severely overdrafted aquifer of the North Highlands sub-area. The County’s approval of the project is inconsistent with policy 2.5.2.3 because it allows commitment of water beyond its safe long-term yield for new development; inconsistent with policy 2.5.3.A.1 because it fails to protect groundwater supplies for coastal priority agricultural uses; and is inconsistent with policy 2.5.3.A.2 because it fails to reduce the 50% build-out level to protect groundwater resources in light of the current severe overdraft situation that exists in the North County area. There is also a question as to whether the water use on site was ever authorized, and if not, reduction of unpermitted water use cannot be used as a legally valid claim for water savings (i.e., one cannot plant berries without a water use permit, which is prohibited by the LCP, and then claim a reduction in water demand because they stop the unpermitted use).

Second, the project **raises a substantial issue with regards to LCP water resource and water quality protection policies**. The LCP requires that requires that new development be located and developed at densities that will not lead to health hazards on an individual or cumulative basis due to septic system failure or groundwater contamination (North County LUP Policy 2.5.2.5), and that the applicant “provide proof of an assured, long term water supply in terms of sustained yield and adequate quality for all lots which are proposed to be created through subdivision” (CIP Section 19.03.015.L The Hydrologic Assessment conducted for the project notes that nitrate levels in neighboring wells exceed State safe drinking water standards. The previous well on site was abandoned when nitrate levels were found to exceed State safe drinking water standards. The new well drilled on site in 2002, currently meets State safe drinking water standards and provides water to the site. However, based on water quality testing from the on-site wells and other surrounding wells, nitrate levels in the on-site water supply well will continue to increase, and may exceed State safe drinking standard levels within the next 55 years, such that the existing water supply well may fail within the economic lifespan of the project. Thus the project cannot be considered to have proof of an assured, long-term water supply in terms of adequate water **quality** as required by CIP Regulation 19.03.015.

Third, The County’s approval **raises a substantial issue with regard to protection of ESHA**, because it allows development (construction of two water tanks and landscaping) within 25 feet of environmentally sensitive maritime chaparral habitat, which may adversely impact the long-term maintenance of this environmentally sensitive habitat area, inconsistent with LCP policies.

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1. Appeal of Monterey County Decision

A. Local Government Action

On July 13, 2004, the Monterey County Board of Supervisors approved a Coastal Development Permit to subdivide a 25-acre parcel into 10 lots ranging in size from 1 to 7.8 acres. The permit also approved



2,000 cubic yards of grading, development of a mutual water system, construction of two water tanks, demolition of a mobile home, barn, and greenhouse, and conversion of an existing mobile home to a senior citizens unit. The County's Final Local Action Notice on the project, including findings and special conditions, is attached as Exhibit 7. The proposed Tentative Subdivision Map is attached as Exhibit 5.

Notice of the Monterey County Board of Supervisor's action on the CDP was received in the Commission's Central Coast District Office on July 22, 2004. The Coastal Commission's 10-working-day appeal period for this action began on July 23, 2004 and concluded at 5:00 P.M. on August 5, 2004. Three valid appeals were received by the Central Coast District Office during this appeal period from: 1) Commissioners Wan and Reilly; 2) Mary Aken, from the Law Office of William J. Yeates, representing Friends, Artists and Neighbors (FANS) of Elkhorn Slough; and 3) Gary Patton, Executive Director of LandWatch, Monterey County (LandWatch). The reasons for the appeal submitted by each appellant are attached to this report as Exhibits 9, 10, and 11, respectively.

B. Summary of Appellants' Contentions

Appellants allege various inconsistencies with the policies and implementing ordinances of the Monterey County Local Coastal Program (LCP), as summarized below (see Exhibits 9, 10, and 11 for full text).

- 1) Groundwater Resources – The County's approval of a subdivision in an area with severe and chronic groundwater overdraft raises issues with regards to adequate protection of groundwater resources.
- 2) Water Quality – The County's approval of a water supply system, to be served by an on-site well in an area where nitrate contamination has caused other wells to fail, raises issues that the on-site well could also fail during the economic lifespan of the development, and so provides an inadequate long-term water supply in terms of water quality.
- 3) Environmentally Sensitive Habitat areas – The FANS and LandWatch appeals contend that the County's approval will allow development adjacent to existing environmentally sensitive maritime chaparral habitat, without adequate protection to ensure the long-term maintenance of the habitat.
- 4) Scenic and Visual Resources – The FANS and LandWatch appeals contend that development of two 20,000-gallon water tanks¹ on the ridge located on proposed Parcel 8 would be inconsistent with policies prohibiting ridgeline development.
- 5) Zoning Requirements – The FANS and LandWatch appeals contend that the subdivision, which includes lot sizes as small as 1 acre, is not consistent with the Zoning designation LDR-2.5, which allows maximum density of 2.5 acres per unit.

¹ The Final Environmental Impact Report, in response to comments pg 2-32, notes that the applicant estimates each 20,000-gallon water tank to measure about 20 feet in diameter and nine feet high.



- 6) Procedural Issues – The FANS and LandWatch appeals also raise the concern that in order to provide adequate public hearing opportunities, the Planning Commission was the appropriate body to review the project following completion of the FEIR, and was required to make a recommendation to the Board of Supervisors (BOS), prior to the BOS ruling on the project. Instead, the BOS certified the EIR and approved the project without any recommendation from the Planning Commission, which had previously recommended denial of the project.

C. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable to the Coastal Commission because subdivisions are not a principally permitted use under the County's zoning ordinance.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to approve the project. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. The project is not located between the first public road and the sea.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the *de novo* stage of an appeal.

2. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.



MOTION: *I move that the Commission determine that Appeal No. A-3-MCO-04-054 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF SUBSTANTIAL ISSUE: Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE: The Commission hereby finds that Appeal No. A-3-MCO-04-012 presents a **substantial issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

3. Recommended Findings and Declarations on Substantial Issue

The Commission finds and declares as follows:

A. Project Location

The project site is located in the Royal Oaks area of North Monterey County at 250 Maher Road (APN 127-252-009), west of Maher Road and approximately 1 mile south of the Tarpey Road/Maher Road intersection (Exhibit 1). The Royal Oaks area consists of low rolling hills, and numerous small canyons and valleys covered by grasses, maritime chaparral and oak forest habitat. Extensive land clearing for agricultural and residential use has occurred in the past. The surrounding unincorporated area includes rural residential, agricultural and limited commercial development.

The 25-acre property ranges in elevation from 120 feet above mean sea level near the southeastern property boundary, to about 320 feet on the northwest. Most of the parcel slopes gently eastward toward Maher Road, up to a ridgeline about 100 to 200 feet from the western property boundary, and then slopes westward. The property site contains a 2,500 sf single-family dwelling, barn, two mobile homes, and greenhouse, all located on the eastern side of the property. The site also contains several unpaved access roads (see Exhibit 3). Organic strawberries are grown on approximately 14 acres of the project site, and four acres are currently fallow agricultural land. The remainder of the project site is covered in oak woods, eucalyptus groves, and central maritime chaparral. A dense grove of Coast live oak trees are situated near the eastern end of the property, and eucalyptus and scattered oaks are found on the western end and along the ridgeline, with patches of maritime chaparral located in the



southwestern portion of the property flanking either side of the mixed eucalyptus/coast live oak habitat in this area.

B. Project Description

Monterey County approved a Coastal Development permit and Standard Subdivision to subdivide a 25-acre parcel into 10 lots ranging in size from 1 to 7.8 acres. The approval also includes 2,000 cubic yards of grading, development of a mutual water system, construction of two water tanks; demolition of an existing mobile home, barn, and greenhouse and conversion of an existing mobile home to a senior citizens unit. The proposed Tentative Subdivision Map is attached as Exhibit 5.

According to the Draft EIR (DEIR, dated December 8, 2003) there are three existing residences on the project site, including a 2,500 square foot home and two mobile homes. The existing two-story single-family dwelling and one of the mobile homes would be retained, with the mobile home converted into a senior citizen unit, both of which would be located on Lot 1. The other mobile home currently on the property would be removed, allowing for construction of 9 new residential units. As approved, a 21-foot wide access road (within a 30-foot wide road and utility easement) would enter the property from Maher Road along the southern property boundary and then head north across the middle of the property to reach the other newly created lots. The County's approval required that the access road avoid removal of a landmark 30-inch cypress tree located in the southeast corner of the site.

Table 1 shows the size and development planned for each of the 10 proposed lots.

Table 1. Proposed Lot Sizes and Potential Development for Sunridge Views Subdivision

Lot Number	Acres	Proposed Development
1	5.0	Existing single family dwelling; convert existing mobile home to senior unit
2	1.2	New sfd
3	1.1	New sfd
4	1.0	New sfd
5	2.4	New sfd
6	1.5	New sfd
7	1.2	New sfd
8	7.8	New sfd



		two 20,000-gallon water tanks
9	1.5	New sfd
10	2.0	New sfd
Dedicated for County Right-of- Way	0.3	-
Total	25.0	9 new sfds

Septic tanks and a well currently serve the house and mobile homes. The current water supply well, recently drilled in 2000, is located uphill from the existing structures, and is capable of producing water at 60 gpm. A former well, located immediately behind the house, was abandoned due to nitrate contamination. The project would allow two 20,000-gallon water tanks to be constructed on Lot 8, although the location of the tanks is not shown on the tentative parcel map, nor are any building or septic envelopes shown.

C. Substantial Issue Evaluation

Appellants allege that the project is inconsistent with the LCP due to (1) inadequate protection of groundwater resources; (2) inadequate long-term water supply and quality due to overdrafted aquifers and the potential for nitrate contamination; (3) potentially adverse impacts to adjacent environmentally sensitive habitat areas; (4) impacts to visual resources; (5) conflicts with the residential zoning density requirements; and (6) procedural errors. As discussed below, only the first three contentions raise a substantial issue with respect to conformity with the Monterey County LCP.

1. Protection of Groundwater and Agricultural Resources

The appellants contend that the approved project is inconsistent with LCP policies that require the protection of long-term groundwater resources. In particular, the appeals raise concerns that there is no adequate or proven **long-term** water supply; approval of the project allows for development that would generate demand beyond the safe yield of available water supplies; development should be phased so that water isn't committed beyond the safe long-term yield; and that the project is not consistent with policies that require groundwater supplies be protected for priority agricultural use. The appellants also contend that conversion from agricultural to residential use makes a long-term commitment to continued water use in an area that is already severely and chronically overdrafted.

a. Applicable Policies

The County's LCP requires the protection of groundwater resources, especially within the North County where severe and chronic groundwater overdrafts have led to saltwater intrusion and the need to



abandon previously-functional water supply wells. The North County LUP requires, among other things, that:

- New developments be controlled to a level that can be served by an identifiable, available, and long-term water supply (Key Policy 2.5.1);
- Development levels that generate water demand exceeding safe yield of local aquifers are only allowed once additional water supplies are secured (No Co LUP Policy 2.5.2.3);
- New development be phased so that existing water supplies are not committed beyond their safe long-term yields (No Co LUP Policies 2.5.2.3, 4.3.5.7, 4.3.6.D.5); and,
- The County should reduce the remaining build-out to limit groundwater use to the safe-yield level or, if required, in order to protect agricultural water supplies (No Co LUP policy 2.5.3.A.2).

Taken together the LCP provisions seek to ensure that any groundwater extraction protects groundwater aquifers, wetlands and streams, and agricultural water supplies.

Specifically, *North County Land Use Plan* provisions state:

North County LUP Action 2.3.4.1. *A comprehensive natural resource and water basin management plan should be prepared for North County. The plan should include recommendations for monitoring residential and industrial runoff, regulation of discharges into coastal wetland and stream courses, instream flow protection, regulation of spoils disposal, development of best management practices for control of non-point discharge and erosion. Criteria should be set for adequate setbacks and development practices to protect environmentally sensitive habitats.*

North County LUP Policy 2.5.1 Key Policy - *The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long term-water supplies. The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed areas.*

North County LUP Policy 2.5.2.3. *New development shall be phased so that the existing water supplies are not committed beyond their safe long term yields. Development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies are secured.*

North County LUP Policy 2.5.3.A.1 *The County's Policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.*

North County LUP Policy 2.5.3.A.2 *The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining build-out as specified in the LUP. This maximum may be*



further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.

North County LUP Action 2.5.4.1 *The County Flood Control and Water Conservation District, in cooperation with the County Planning Department should develop a system of monitoring the effects of increasing development on the groundwater resources. The County should establish a fee as part of permit applications (or some other financial arrangement) in order to provide a fund to support monitoring of groundwater use and to support further studies of groundwater resources or potential surface water projects that could serve the North County.*

North County LUP Action 2.5.4.2. *County growth management studies now in progress should recognize the water supply limitations in the North County Coastal Zone as a chief factor and resource constraint in determining an appropriate annual-growth rate for the area. An ordinance should be drafted by the County to phase development at a level compatible with the availability of groundwater supplies.*

North County LUP Action 2.6.4.1. *Monterey County shall develop a comprehensive agricultural management plan for existing and future agricultural uses in North Monterey County, in coordination with other appropriate public and private agencies, including but not limited to the County Agricultural Commissioner, Agricultural Extension, Soil Conservation Service, Monterey Coast Resource Conservation District, and the Farm Bureau. The goal of this plan would be the protection of long-term agricultural production, groundwater availability, water quality, and public welfare.*

North County LUP Policy 4.3.5.4 *Where there is limited land, water, or public facilities to support development, coastal-dependent agriculture, recreation, commercial and industrial uses shall have priority over residential and other non-coastal-dependent uses.*

North County LUP Policy 4.3.5.7 *New subdivision and development dependent upon groundwater shall be limited and phased over time until an adequate supply of water to meet long-term needs can be assured. In order to minimize the additional overdraft of groundwater accompanying new development, water conservation and on-site recharge methods shall be incorporated into site and structure design.*

North County LUP Policy 4.3.6.D.1 *Land divisions for residential purposes shall be approved at a density determined by evaluation of site and cumulative impact criteria set forth in this plan. These include geologic, flood, and fire hazard, slope, vegetation, environmentally sensitive habitat, water quality, water availability, erosion, septic tank suitability, adjacent land use compatibility, public service and facility, and where appropriate, coastal access and visual resource opportunities and constraints.*



North County LUP Policy 4.3.6.D.5 *Where public facilities or water supply necessary to support residential development are limited, residential growth should be phased to allow sufficient time for these essential elements to be provided.*

Code Section 20.144.070 **WATER RESOURCES DEVELOPMENT STANDARDS:** *The intent of this Section is to provide development standards which will protect the water quality of the North County surface water resources aquifers, and groundwater, control new development to a level that can be served by identifiable, available, and long-term water supplies, and protect North County streams, estuaries, and wetlands from excessive sedimentation resulting from land use and development practices in the watershed areas. (Ref. Policy 2.5.1).*

Code Section 20.144.070.E.10. *Development shall not be permitted if it has been determined, through preparation of the hydrologic report, or other resource information, that: a) the development will have adverse impacts to local agricultural water supplies, such as degrading water quantity or quality; and, b) there are no project alternatives and/or mitigation measures available that will reduce such impacts to levels at which the long-term maintenance of local coastal priority agricultural water supplies is assured. (Ref. Policy 2.5.3.A.1 t A.2)*

Code Section 20.144.070.E.11. *Development shall not be permitted if it has been determined, through preparation of a.) hydrologic report, or other resource information, that: a) the development will generate a water demand exceeding or adversely impacting the safe, long-term yield of the local aquifer; and, b.) there are no project alternatives and/or mitigation measures available that will reduce the development's water use to a level at which it will not exceed or adversely impact the safe, long-term yield of the local aquifer.*

North County LUP 2.6.3.8. *Conversion of uncultivated lands to crop lands shall not be permitted on slopes in excess of 25% except as specified in policy 2.5.3(4) of this plan and shall require preparation and approval of an Agricultural Management Plan. Conversion of uncultivated lands to crop lands on lands where 50% or more of the parcel has a slope of 10% or greater shall require a use permit. Approval of the use permit shall follow the submission of an adequate management plan. These plans should include analysis of soils, erosion potential and control, water demand and availability, proposed methods of water conservation and water quality protection, protection of important vegetation and wildlife habitats, rotation schedules, and such other means appropriate to ensure the long-term viability of agriculture on that parcel.*



b. Analysis of Consistency with Applicable LCP Policies

The County staff report for Sunridge Views notes that a project benefit justifying approval is a reduction in water use.² While at first glance this appears to be an appealing argument, further analysis reveals that it not persuasive and does not substitute for several inconsistencies with LCP policies that are not ameliorated³. In contrast to the current agricultural use (whose water consumption has varied and can be more easily controlled), this subdivision represents a permanent commitment of an estimated 7.5 af/yr (acre feet/year) of water from an overdrafted groundwater basin to a rural residential use. This is not a priority use under the LCP (nor Coastal Act).

No matter whether the proposed subdivision results in less overall water demand on this particular site, there is no guarantee that it could be served by an available, long-term water supply, as required by cited Key policy 2.5.1. The project relies on a well that will draw from the severely overdrafted North Highlands aquifer. Since, “water levels in the Highlands sub-areas have consistently declined over the last 20 years,”⁴ the well’s long-term reliability is questionable. Of more immediate concern is the possibility that the well on site could become unusable due to groundwater nitrate contamination, as others in the area have (see discussion in Water Quality section below). If the well fails in the future, there is no alternative water supply system available in the area that could serve the new subdivision.

Even if the site’s well is able to supply potable water over the long-term, the proposed subdivision still would not comply with LCP provisions because the use of the well affects and is affected by the entire groundwater basin in which it is located. Approving the creation of new lots that rely on groundwater from a severely overdrafted basin is inconsistent with LUP policy 2.5.2.3. The subject site is located in North Monterey County, which has severe groundwater overdraft problems on the order of 11,700 acre-feet per year (af/yr).⁵ The North Highlands hydrogeologic sub-area has historically had a groundwater demand of 4,780 af/yr and sustainable yield of only 2,920 af/yr. This has led to a current deficit of 1,860 af/yr (i.e., the current demand is 39 percent more than available groundwater supplies). Over-commitment of the aquifer threatens water supplies of other existing users due to seawater intrusion, which currently affects nearly half of the North County area. Until the basin is brought into equilibrium,

² There is no direct finding in the County’s final action in this regard; rather just a general finding of consistency with LCP policies and a reference to the project EIR’s consistency analysis chapter which states that the project would result in a positive effect on the groundwater basin increasing net recharge by 24 acre-feet per year..

³ For instance, as further noted in the DEIR, the North Monterey County hydrogeologic area is in a state of significant overdraft, and the proposed project would generate a water demand for which a long-term sustainable supply of water cannot be assured.

⁴ Furgo West for Monterey County Water Resources Agency, *North Monterey County Hydrogeologic Study, Vol 1*, October 1995, p.53.

⁵ “The County estimate is based on “Sustainable yield;” defined as the amount of annual pumping not causing additional ground water declines from 1992 conditions and/or not causing additional seawater intrusion. Since there were already groundwater problems before 1992, this definition may not be adequate. A more appropriate definition in terms of Coastal Act concerns would be: “the amount of naturally occurring ground water that can be withdrawn from an aquifer on a sustained basis, economically and legally, without impairing the native ground-water quality or creating an undesirable effect such as environmental damage,” from Fetter, C.W., *Applied Hydrogeology*, Fourth Edition, 2001, p. 447. Additionally, any water that is extracted from ground water (or intercepted before it can become ground water) will reduce the amount of ground water available. Even if the aquifer remains saturated to the same levels, ground water flow will change and the amount that is recharged (to streams, to marshes, to the ocean) will change as a result of any interception or extraction of ground water. Thus, from a Coastal Act perspective the amount of acceptable groundwater extraction may be less than what is calculated in this study as “sustainable yield.”



future water use by even existing users will continue to exacerbate the already critical and chronic situation. Cumulatively, new development, particularly the creation of additional residential lots, will draw groundwater levels into further overdraft. Payment of the required fee to the Water Resources Agency (coastal permit condition # 66) only helps fund further study of solutions and does not adequately mitigate for the continued over-drafting of the North Highlands aquifer.

Future water projects mentioned in the County staff report that could result in an available long-term water supply are only in the earliest stages of planning and there is no assurance when or if they will actually become available, thus they cannot be counted on at this time to find new projects using groundwater consistent with LCP policies. The County staff report for the project notes that it would likely benefit from implementation of the Pajaro Valley Water Management Agency's (PVWMA) *Revised Basin Management Plan* projects as well as the Salinas Valley Water Project (SVWP) at some point in the future.⁶ The staff report notes that "although the County is not relying on these projects as evidence of consistency of the Sunridge Views project, the County anticipates that these projects would be relied upon in the future as an additional assurance of a long-term sustainable water supply." The PVWMD improvement projects are to use surface and imported water to substitute for agricultural wells along the coast currently experiencing salt-water intrusion. Similarly, the Salinas Valley Water Project would use surface water to substitute for agricultural wells and to replenish the aquifer. Neither of these projects would directly supply potable water to the Sunridge Views neighborhood, but they have the potential to lessen the groundwater overdraft in the area. These water projects are still in the planning stages, and neither the PVWMD nor SVWP projects have completed the permitting process, let alone have all their financing. If and when the projects are ever constructed, it would take some time and monitoring to determine if they have been successful at halting groundwater overdraft and restoring groundwater reserves to sustainable yields. Only then could a determination be made that there was an adequate long-term water supply available to serve additional development. Thus, it is premature to rely on these projects as an assured, available long-term water supply.

⁶ The PVWMA has plans to address saltwater intrusion, by reducing agricultural water withdrawals in the lower portion of the watershed and substituting that water with supplemental water taken from the upper Pajaro Valley watershed and water imported from the Central Valley. The PVWMA, as designed, is for agricultural use only, and is in no way designed to provide any type of domestic water supplies.

The SVWP is currently only in design phase, has had approvals for tax assessments, but the design is not complete, and so is not permitted or constructed yet. Based on discussions with County Water Resources Agency staff, the SVWP is currently in 8-10 month design phase and the regulatory process has not yet begun, thus construction is not expected to be complete before at least the year 2008. Monitoring would then need to be conducted for some period of time to determine if either of the projects actually stops groundwater overdraft, and builds up groundwater levels to a point where there is more water available than is being withdrawn, before allowing additional, non-priority development to depend on this water as an assured long-term water supply.

⁷ The PVWMA has plans to address saltwater intrusion, by reducing agricultural water withdrawals in the lower portion of the watershed and substituting that water with supplemental water taken from the upper Pajaro Valley watershed and water imported from the Central Valley. The PVWMA, as designed, is for agricultural use only, and is in no way designed to provide any type of domestic water supplies.

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The Monterey County LCP was written in the early 1980's and acknowledged the overdraft problems in North County, but allowed some new development prior to the water problem being resolved, while studies were conducted to more thoroughly address the issue. Since those studies have now been completed, the proposed project should no longer be eligible to take advantage of that accommodation. LUP policy 2.5.2.3 does potentially allow up to 50% of maximum build-out to occur (i.e., 2,043 units or lots) prior to the availability of a new water supply.⁸ Currently 255 units or lots remain until that threshold is reached. However, that is a **maximum** threshold, and LUP policy 2.5.3.A.2 includes a caveat that requires the remaining build-out threshold to be reduced to limit groundwater use to the safe-yield level or if required in order to protect agricultural water supplies. When the *Land Use Plan* was written in the early 1980's, it did not conclude what the "safe yield," was, but rather noted that:

A study for the State Department of Water Resources in 1977 indicated a general groundwater overdraft of about 15,500 acre-feet annually in the North County area. A more detailed study by the U.S. Geological Survey in 1980 confirmed the overdraft of the Aromas Sand Aquifer. The report estimated a study area annual overdraft in the North County area of about 1,500 to 8,000 acre-feet. However, due to the depth of the water-bearing Aromas Sands, its high storage capacity, and the overall complexity of geologic and hydrologic considerations, the long-term safe yield of the aquifer is difficult to estimate...

It is evident that continued overdraft in the North County will lead to increasing saltwater intrusion and lower water tables. In some areas, water shortages may occur. Managing the demand for water generated by agricultural use and residential and commercial development within the limits of attainable long-term water supply sources will be a major challenge for the area in the coming years. Additional information is urgently needed to help determine the long-term safe yield of North County aquifers. The opportunities for obtaining a surface water supply should also be investigated.

Since this was written, the County has sponsored more definitive studies, as mentioned above, that provide quantitative estimates of overdraft and safe yield by subarea in North County, and show that water demand already exceeds safe yield throughout North County. Thus, pursuant to policy 2.5.3.A.2, since the safe yield is already exceeded, further build-out must be reduced to zero. Where new development on existing legal lots of record must be approved, no net increase in water use should be allowed. Correspondingly, since it is known that groundwater extractions are harming agricultural water supplies, build-out needs to be commensurately reduced to protect these supplies.

The County at least temporarily implemented this requirement of policy 2.5.3.A.2 by establishing an urgency moratorium on new subdivisions from September 2000 to August 2002. But, State law allows

phase and the regulatory process has not yet begun, thus construction is not expected to be complete before at least the year 2008. Monitoring would then need to be conducted for some period of time to determine if either of the projects actually stops groundwater overdraft, and builds up groundwater levels to a point where there is more water available than is being withdrawn, before allowing additional, non-priority development to depend on this water as an assured long-term water supply.

⁸ This policy applies to new lots and second units on existing lots; one home per vacant parcel is permitted



moratoria established by urgency ordinances to last only two years. For a more permanent solution, County staff and Planning Commissioners crafted a new General Plan/local coastal program that would have mostly extended the ban on creating new residential lots within rural North County by increasing minimum parcel sizes to 40 acres, but the Board of Supervisors has since put the revised General Plan effort on hold. Meanwhile, subdivisions, like Sunridge Views, originally proposed before the moratorium, are now being approved by the County, in contradiction to policy 2.5.3.A.2's mandate to reduce the build-out threshold below 50% under current circumstances. Full adherence to this policy, though, as well as other related policies cited above, requires that this project along with any other new subdivisions not be approved at this time.

Moreover, the LCP inconsistencies of this project cannot be overlooked simply because the proposed project is estimated to use less water per year than the current strawberry operation. The site's existing water use for 2002 is estimated to be 47.12 af/yr. Residential use is estimated at 2.35 af/yr based on a typical 0.78 af/yr per dwelling unit (times the three units currently on the site). Agricultural use is estimated at 44.77 af/yr based on 3.2 af/yr per acre of berry cultivation (times 14 acres in production in 2002). Due to recharge from infiltration, the estimate net draft on the aquifer is 24.05 af/yr (i.e., 23.08 af/yr of extracted water is estimated to infiltrate back into the aquifer). Future water use after Sunridge Views is built out is estimated to be 7.85 af/yr (0.78 af/yr per dwelling unit times 10 units). Due to recharge from infiltration, the estimate net draft on the aquifer is 0.05 af/yr (i.e., 7.8 af/yr of extracted water is estimated to infiltrate back into the aquifer). There is thus a reduction of 39.27 af/yr in estimated water use and a reduction of 24 af/yr in net draft on the aquifer. But, this estimated reduced water use as a result of agricultural conversion to residential use is not necessarily certain, long-term, nor the best outcome for the site for at least seven reasons.

First, there is no evidence that the existing water use was ever authorized because it is unknown if the structures or current farming activities ever obtained a coastal development permit. North County LUP Policy 2.6.3.8 requires a coastal development permit for conversion of uncultivated lands to crop lands where 50% or more of the parcel has a slope of 10%. Although slope density is difficult to read on the Tentative Parcel Map (shading for different slope ranges does not appear), contours are shown at 2 foot increments and given the scale of map (1" = 50 feet) show that more than 50% of parcel is over 10% slope. Without a coastal development permit, all agricultural activities, and residential use on the site is in violation of the LCP and Coastal Act, and so reduction of unpermitted water use cannot be used as a legally valid claim for water savings (i.e., one cannot plant berries without a water use permit, which is prohibited by the LCP, and then claim a reduction in water demand because they stop the unpermitted use). It may be that development and agricultural use began prior to enactment of the Coastal Act, but it is unknown at this time.

Second, even if the existing uses had been permitted, the estimated net reduction in water consumption is not guaranteed, in part because the estimates regarding existing and proposed water demand provided in the project's hydrologic report assume that the new SFD development will not use any water for landscaping and gardening. This assumption seems unreasonable. The permit is not conditioned to prohibit such water uses, only future commercial agricultural uses. Thus, actual residential water use could be much greater than estimated if individual, future property owners irrigate their land for



personal use (e.g., for landscaping and gardening); Future owners may also decide to build second (senior) units which would also add to water use on site. The project's hydrologic report estimates zero future irrigation use for landscaping.

Third, the estimated current and future draft on the aquifer is also by no means certain. These figures are based on estimated infiltration. Only 37% of crop irrigation water is estimated to infiltrate back into the groundwater basin, while 50% of residential water use is estimated to infiltrate back into the groundwater basin. Additional infiltration is estimated from precipitation that enters into the ground. The 50% figure for residential use is based on aquifer recharge from septic systems. However, septic leach fields are shallow meaning it would take many years for the leachate to reach the groundwater basin. Conversely, the use of drip irrigation for watering strawberries could result in lower evaporation rates and consequently higher than estimated infiltration rates.

Fourth, even if the estimated net draft on the aquifer of 24 af/yr approximates reality, that figure is only from one period of time. Strawberry cultivation is a recent phenomenon; in the not too distant past, irrigated agriculture was not practiced in this area. According to the project's hydrologic report, in 1999 only 9 acres of the site was in production; while according to the final EIR only 4.5 acres were in cultivation in 1998 and 1999. Actual water use in those two years was 13 and 14 acre-feet respectively.⁹ In contrast, ongoing residential use will require a commitment to a permanent long-term water supply.

Fifth, as long as the property were to stay primarily in agricultural use, water consumption could be more easily adjusted or even terminated, especially if there is ever a supply or quality problem. Water use for agriculture can vary greatly based on the type of crops grown. For example artichokes use only 1.75 af/yr/acre and Brussels sprouts use only 2.5 af/yr of water per acre of crop. Grazing may not require any irrigation. There are also initiatives underway and planned to practice more aggressive conservation measures in crop irrigation to reduce water consumption.

Sixth, the LCP policies and subsequent planning do not necessarily suggest that permanently eliminating commercial agriculture on this site is the way to address the water overdraft. The latest in a series of studies is the County's *North County Comprehensive Water Resources Management Plan*. This plan, which, despite its name, is lacking in details, broadly calls for four alternatives to be pursued in parallel:

- Acquisition of agricultural parcels to reduce demand;
- An expansion of the Salinas Valley Water Project for agricultural water
- Use of the Salinas Valley Water Project for "urban" water
- Construction of a desalination plant and piping some of its water to "urban" uses in North County.

The acquisition of agricultural parcels would mean that they would no longer be used for irrigated cultivation. Such an approach, as one component of an overall agricultural management plan (required

⁹ A meter was installed on the well in 1998. No actual water use figures from metered wells is available in the County record from 2000 on.



by No Co LUP action 2.6.4.1, but not yet prepared) and water supply plan, may have merit in reducing both water use and erosion. However, it may cause a conflict because agriculture is a priority use under the Coastal Act and the LCP. Thus, any agricultural reduction or fallowing program should be on land determined to be unsuitable for long-term cultivation based on resource protection criteria, not ad hoc decisions on individual parcels, as is the case here. And, any such reduction or fallowing should contribute to arriving at an aquifer in balance to protect the agricultural use that is to remain. Absent the details of such a program being approved, including a likely LCP amendment, there is no guarantee that the subject project would result in a net decrease in water use because equivalent new or expanded agriculture on a nearby site could cancel it out. Also, absent the details of such a program being approved it is premature to conclude that the subject property is an appropriate one on which to permanently restrict agriculture compared to all other properties in the sub-basin that are under cultivation. The site is zoned low density residential, (LDR/CZ 2.5), but this designation does provide for row crop cultivation as a principal permitted use. The property is also sloping, but the strawberry fields are mostly on lands less than the 25%. Since cultivation on slopes greater than 25% is prohibited, there may be other irrigated cultivation occurring on steep slopes or less viable land than the subject site that should be taken out of production before fallowing land on this site.

Seventh, the LCP policies and subsequent planning do not necessarily suggest that substituting residential use for agricultural use, as proposed and required by permit conditions, is the way to address the overdraft. In describing the approach of allowing subdivision where there was no net increase in water use through an offset program, the *North County Comprehensive Water Resources Management Plan* noted that:

The Planning Commission rejected this approach because no mitigation measures were specified, no mechanism for local land use control or implementation was defined, agricultural lands could be taken out of production contrary to Coastal Plan policies, and there were no quantified or meaningful reductions in demand. One key problem was leaving the development of the water mitigation plans up to project proponents without any guidelines or specific procedures to ensure compliance. These issues could be resolved and a viable means of reducing overdraft developed through a coordinated effort to define and manage the mitigation efforts, make the process legally defensible, and quantify the savings.

The Commission agrees with this assessment. If the County were to develop such an offset program it would have to determine not only which parcels should never have agriculture (as described above), but also which are priority for other uses and what those uses are. Under the LCP (and Coastal Act) priority is for coastal dependent uses and concentration of development in or near urbanized areas. Absent the details of such a program being approved, it is premature to conclude that the subject site has a priority for being subdivided into low density residential parcels.

c. Conclusion

The County's approval of the Sunridge Views subdivision **raises a substantial issue with regards to protecting groundwater resources**. At first glance it is tempting to consider as positive and worthy of



approval a project that purports to reduce water use in an area of known, severe overdraft. But, there are many potential techniques being considered by the County that would result in reduced pumping of the overdrafted groundwater basin (e.g., fallowing agricultural uses on steeper slopes than the subject site, implementation of water conservation measures, more capture of surface water to substitute for groundwater withdrawals and/or replenish groundwater basins, using desalinated water instead of groundwater). Each of these has a price tag; the trade-off in allowing the subject project is a net gain of nine new rural residential parcels, each requiring a permanent commitment of potable water, currently only available from overdrafted basins. Possibly, as part of a detailed program, which spelled out where agriculture would continue versus where it would be prohibited in the context of an overall solution that would guarantee that the groundwater basins would achieve equilibrium, this trade-off would be acceptable. But no such program has been advanced to date. Absent such an approved program, approval on new subdivisions is premature. The Commission must find substantial issue with the County permit approval because it relies on a permanent commitment to using groundwater from an overdrafted basin. The North Highlands aquifer is already overdrafted by an estimated 1,860 af/yr. The PVWMA and SVWP projects, which are designed to improve long-term water supplies, are still in the planning stage and cannot be relied upon as a future long-term water supply until they are constructed and it has been shown that they can restore groundwater resources and provide a safe yield for planned development. The County's approval of the project is inconsistent with policy 2.5.2.3 because it allows commitment of water beyond its safe long-term yield for new development; inconsistent with policy 2.5.3.A.1 because it fails to protect groundwater supplies for coastal priority agricultural uses; and is inconsistent with policy 2.5.3.A.2 because it fails to reduce the maximum 50% build-out level to protect groundwater resources in light of the current severe overdraft situation that exists in the North County area.

2. Water Quality

The appeals also raise the issue of conformance with the LCP's policies for providing a suitable water supply because of concerns regarding nitrate contamination.

a. Applicable Policies

***North County LUP Policy 2.5.2.5.** New rural development shall be located and developed at densities that will not lead to health hazards on an individual or cumulative basis due to septic system failure **or contamination of groundwater**. On-site systems should be constructed according to standards that will facilitate long-term operation. Septic systems shall be sited to minimize adverse effects to public health, sensitive habitat areas, and natural resources.[emphasis added]*

***Code Section 19.03.015.L Subdivision Ordinance.** ...Hydrological evidence shall be submitted to the Director of Division of Environmental Health to show **evidence of water quality and quantity**. The applicant shall also provide proof of an assured, long-term water supply in terms of sustained yield **and adequate quality** for all lots, which are proposed to be created through subdivisions...[emphasis added]*



b. Analysis of Consistency with Applicable LCP Policies

North County LUP Policy 2.5.2.5 requires that new development be located and developed at densities that will not lead to health hazards on an individual or cumulative basis due to septic system failure or groundwater contamination.

Section 19.03.015 of Title 19 (Subdivision Ordinance) of the Monterey County Code requires that the applicant “provide proof of an assured, long term water supply in terms of sustained yield **and adequate quality** for all lots which are proposed to be created through subdivision” (emphasis added).

According to the Hydrologic Assessment conducted for the project by Todd Engineers (Technical Memorandum dated December 19, 2002, and Addendum dated July 21, 2003), the subject parcel had previously been served by a well located immediately behind the house. After testing high for nitrates (a water sample collected and analyzed in early January 2000 indicated a nitrate concentration of 82 parts per million (ppm), which dropped down to 46 ppm only after 4 hours of flushing, both of which exceed the California drinking water standard for nitrate, set at 45 ppm) the well was abandoned and a new well, located further up the hill, was drilled in February 2000. While the depth and screening levels of the earlier well are not known, the new well has been drilled to a depth of 500 feet below surface grade (bsg), is sealed to 300 feet bsg, and screened below 340 feet bsg. Water samples collected from the new well in February 2000 tested below detection levels. According to data shown in the Technical Addendum, which appears to include additional data points provided by Monterey County Health Department, three water samples from the new well, taken in 2000 (presumably the February 2000 sample), 2001, and 2003, all had nitrate levels apparently below detection levels. Thus since the earlier well was abandoned, samples from the new well were used to estimate the amount of time it would take for nitrate levels on the site to exceed safe drinking water standards, which was estimated to be 55 years (assuming a non-detection level of about 0.5 mg/l to be the existing nitrate concentration, and an average annual increase of 0.85 mg/l based on averaging of all other wells sampled in the area). However the Hydrologic Assessment notes that using an average annual increase is probably not wise since the average yearly increase varies greatly from well to well in this area (ranging from an increase of -.305 to +2.75 ppm per year).

The Hydrologic Assessment notes that four properties just north of the subject site have exceeded State safe drinking water standards. One site required drilling of a new, deeper well, another property was placed on bottled water until further notice, and another was required to install a nitrate treatment system. A property to the south of the subject site, based on the last sampling reported from 2001, had levels below the State drinking water standards. They also note that future water quality will most likely be impacted by nitrates from past and current fertilizer applications, and that, although nitrate fertilizer usage will effectively cease once the property is developed, nitrate in the soil will continue to leach to groundwater.

The conclusions of the Hydrologic Assessment (Technical Memo dated July 21, 2003) indicate that:

- (1) Groundwater from the new well should not exceed the nitrate MCL [maximum concentration level] until 2055. However this date is based on only three sample*



analyses and an average nitrate increase for the entire Maher road Area...local groundwater nitrate increases are more variable

- (2) Shallow groundwater already is contaminated with nitrate; wells with shallow screens (<100 feet) are above the 45 mg/l MCL*
- (3) Some wells with deep screen (>300 feet) are already above the MCL or will be above the MCL within the next few years*
- (4) Nitrate concentrations in deeper wells are increasing overall*
- (5) Nitrate leaching rates vary with time and location (geology, land use, topography, etc)*

Hence there is a very real potential that the new water supply well will exceed nitrate standards within the economic lifespan of the project, due to residual nitrate fertilizer that exists in the soils.

The Hydrologic assessment notes that because of the variability in annual nitrate increase from well to well in the Maher Road area, individual well monitoring for nitrate is more important than an average yearly nitrate increase for predicting when groundwater levels will exceed state safe drinking water standards. The County approval has incorporated this concern by requiring that ongoing monitoring should be conducted in order to predict when nitrate levels would actually exceed acceptable levels. However, this implies that adequate water quality might not be available at some time in the future, possibly even prior to 50 years. Other wells close to the site have already experienced nitrate contamination and have been forced either to use other water sources (e.g., bottled water), treatment systems, or have been abandoned. Such conditions would eliminate the long-term water supply the project would depend upon, and could lead to health hazards and further groundwater contamination, inconsistent with section 19.03.015.

c. Conclusion

The Hydrologic Assessment conducted for the project notes that nitrate levels in neighboring wells exceed State safe drinking water standards. A previous well on site was abandoned when nitrate levels were found to exceed State safe drinking water standards. The new well drilled on site in 2002, currently meets State safe drinking water standards and provides water to the site. However, nitrate levels will continue to increase, and may exceed State safe drinking water standard levels within the next 55 years, which is considered to be within the economic lifespan of the project. Since the project well may fail within the economic lifespan of the project, the project cannot be considered to have proof of an assured, long-term water supply in terms of adequate water quality as required by 19.03.015. The County's condition requiring monitoring of water quality will help to identify when the well might fail, but it does nothing to provide for a long-term water supply if it indeed does fail. Thus, the project **raises a substantial issue with regards to LCP water resource and water quality protection policies.**



3. Environmentally Sensitive Habitat Areas

The FANS and LandWatch, Monterey County appeals raise the issue of conformance with the LCP's policies for protecting environmentally sensitive habitat areas. The project includes locating two water storage tanks on Lot 8, which contains Central Maritime Chaparral (maritime chaparral), a plant community classified as ESHA by the LCP. Additionally, placement of the access road, and future residential development may have potential impacts to oak woodland, which is also protected by LCP policies.

The appellants also contend in part that the project on appeal is inconsistent with the certified LCP ESHA policies for the following reasons:

- Project allows non-resource dependent development (vegetation removal) in environmentally sensitive (maritime chaparral) habitat
- Siting two water tanks in and/or adjacent to ESHA is not compatible with long-term maintenance of the resource.
- Planting of non-native landscaping within 30 feet of a developed sites is not compatible with the long-term maintenance of the resource.
- A 25-foot setback is not adequate to protect maritime chaparral from new development.
- Erosion from project may impact aquatic habitats of Elkhorn Slough watershed.

a. Applicable Policies

North County general ESHA policies relevant to this project include the following:

North County LUP Policy 2.3.2.1. *With the exception of resource dependent uses, all development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall be prohibited in the following environmentally sensitive habitat areas: riparian corridors, wetlands, dunes, sites of known rare and endangered species of plants and animals, rookeries, major roosting and haul-out sites, and other wildlife breeding or nursery areas identified as environmentally sensitive. Resource dependent uses, including nature education and research hunting, fishing and aquaculture, where allowed by the plan, shall be allowed within environmentally sensitive habitats only if such uses will not cause significant disruption of habitat values.*

North County LUP Policy 2.3.2.2. *Land uses adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts, upon habitat values and where they do not establish a precedent for continued land development, which, on a cumulative basis, could degrade the resource.*



North County LUP Policy 2.3.2.6. *The County shall ensure the protection of environmentally sensitive habitats through deed restrictions or dedications of permanent conservation easements. Where land divisions or development are proposed in areas containing environmentally sensitive habitats, such restrictions or easements shall be established through the development review process. Where development has already occurred in areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.*

North County LUP Policy 2.3.2.8. *Where development is permitted in or adjacent to environmentally sensitive habitat areas (consistent with all other resource protection policies), the County, through the development review process, shall restrict the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) to the minimum amount necessary for structural improvements.*

North County LUP Policy 2.3.2.3. *New development adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New subdivisions shall be approved only where significant impacts to environmentally sensitive habitats from development of proposed parcels will not occur.*

North County LUP Policy 2.3.2.4. *To protect environmentally sensitive habitats and the high wildlife values associated with large areas of undisturbed habitat, the County shall maintain significant and, where possible, contiguous areas of undisturbed land for low intensity recreation, education, or resource conservation use. To this end, parcels of land totally within sensitive habitat areas shall not be further subdivided. On parcels adjacent to sensitive habitats, or containing sensitive habitats as part of their acreage, development shall be clustered to prevent habitat impacts.*

Regulation 20.144.040.B.2. *Development on parcels containing or within 100 feet of environmentally sensitive habitats, as identified on the current North County Environmentally Sensitive Habitat resource map, other resource information, or planner's on-site investigation, shall not be permitted to adversely impact the habitat's long-term maintenance, as determined through the biological survey prepared for the project. Proposals shall be modified for siting, location, bulk, size, design, grading vegetation removal, and/or other methods where such modifications will reduce impacts to an insignificant level and assure the habitat's long-term maintenance. Also, the recommended mitigation measures of the biological survey will be considered by the decision-making body and incorporated into the conditions of approval as found necessary by the decision-making body to implement land use plan policies and this ordinance and made conditions of project approval. (Ref. Policy 2.3.2.2)*

Regulation 20.144.040.B.5. *Subdivision of parcels containing an environmentally sensitive habitat area, as identified on the current North County Environmentally Sensitive Habitat resource map, other resource information or planner's on-site investigation, shall only be permitted where such subdivision not result in adverse impacts to the habitat's long-term maintenance, as determined through the biological survey. **Such subdivisions shall incorporate***



techniques, such as clustering, appropriate setbacks from the habitat, building envelopes, and conservation easements, in order to mitigate adverse impacts to the habitat. As well, large and, where feasible, contiguous areas and corridors of native vegetation shall be placed in conservation easement so as to provide sufficient vegetative habitat for the long-term maintenance of its associated wildlife. Further conditions of project approval shall include: a) establishment of building envelopes on each approved parcel which allows for the least impact on and vegetation removal within and adjacent to the environmentally sensitive habitat; b) recordation of the building envelopes on the final map or record of survey; c) placement of a note on the final map stating that no grading, structures, roads, animal grazing, vegetation removal, or other activities may take place outside of the building envelope; and, d) recordation of a notice with the County Recorder stating that a building envelope has been established on the parcel, and that no grading, structures, roads, animal grazing, vegetation removal, or other activities may take place outside of the envelope. (Ref. Policy 2.3.2.4 and 2.3.3.C.1 & C.2)

North County LUP Policy 2.3.3.A.2. *Maritime chaparral is an uncommon, highly localized and variable plant community that has been reduced in North County by residential and agricultural development. Further conversion of maritime chaparral habitat to agricultural uses is highly discouraged. Where new residential development is proposed in chaparral areas, it shall be sited and designed to protect the maximum amount of maritime chaparral. All chaparral on land exceeding 25 percent slope should be left undisturbed to prevent potential erosion impacts as well as to protect the habitat itself.*

North County LUP Policy 2.3.3.A.3. *Domestic livestock should be managed and controlled in areas where they would degrade or destroy rare and endangered plant habitats, riparian corridors, or other environmentally sensitive habitats.*

North County LUP Policy 2.3.3.A.4. *Oak woodland on land exceeding 25% slope should be left in its native state to protect this plant community and animal habitat from the impacts of development and erosion. Development within oak woodland on 25% slope or less shall be sited to minimize disruption of vegetation and habitat loss.*

b. Analysis of Consistency with Applicable LCP Policies

The LCP requires protection of ESHA by, among other means, prohibiting non-resource dependent development in ESHA (LUP 2.3.2.1), limiting the amount of vegetation and land that can be disturbed (LUP 2.3.2.8), and requiring deed restrictions or permanent conservation easements over ESHA (LUP 2.3.2.6). The LCP also requires that development adjacent to ESHA be compatible with the long-term maintenance of the resource (LUP 2.3.2.2) and protect the maximum amount of maritime chaparral (LUP 2.3.3.A.2). The LCP only allows new subdivisions where significant impacts to ESHA will not occur, and where the long-term maintenance of the habitat will not be adversely impacted (CIP Regulation 20.144.040.B.2, 20.144.040.B.5). Finally, the LCP also protects oak woodland by requiring that development be sited to minimize disruption of vegetation and habitat loss.



According to the biological report conducted for the site by Randall Morgan (dated July 19, 1999), the subject parcel includes remnants of two distinct plant communities that had originally covered the site, including Coast Live Oak woodland, on the eastern slope, and maritime chaparral on the upper slope and ridgetop. The majority of the site was cleared, some time in the past, for agricultural use, and now contains a fairly large stand of live-oak woodland near the lower, eastern end of the property (in proposed lots 1, 2 & 5) and a smaller patch of maritime chaparral at the upper, southwestern end of the property (entirely within proposed lot 8) (see Exhibit 6).

Central maritime chaparral is an uncommon vegetation type that has been identified as a rare plant community by the California Department of Fish and Game. At one time, central maritime chaparral covered extensive areas in north Monterey County. However, in the past forty years much of this habitat has been converted to agriculture and rural residential uses, so that less than 1,700 acres remain in North County. Habitat loss and concomitant fragmentation leave the remaining patches susceptible to increased edge effects due to the invasion of non-native species.

Central maritime chaparral habitat is frequently dominated by brittleleaf manzanita (*Arctostaphylos tomentosa*) plus one or more of four endemic manzanita taxa including: Pajaro manzanita (*Arctostaphylos pajaroensis*), Hooker's manzanita (*Arctostaphylos hookeri* ssp. *hookeri*), sandmat manzanita (*Arctostaphylos pumila*) and Monterey manzanita (*Arctostaphylos montereyensis*).¹⁰ At some locations, stand dominance is shared with chamise (*Adenostoma fasciculatum*). Other species that comprise this plant community include: black sage (*Salvia mellifera*), poison oak (*Toxicodendron diversilobum*), and coyote brush (*Baccharis pilularis*).

The biological report for the project site indicates that maritime chaparral in the southwestern part of the site contains several special status shrub species, including Pajaro manzanita (*Arctostaphylos parjaroensis*), Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), and Eastwood's goldenbush (*Ericameria fasciculata*), all of which are growing on or near the relatively open margins of the main chaparral patch in the southern half of Lot 8. As shown on the biological map included in the Draft EIR (see Exhibit 6), the remaining maritime chaparral on site is located at the edges of the mixed eucalyptus and coast live oak habitat that extends along the ridgetop on the western portion of the site. The biological report indicates that the eucalyptus stand began as a row of planted trees but has since spread by seed so that they now dominate most of the remaining chaparral area. French broom (*Genista monspessulana*) is another invasive plant species that has become established in the maritime chaparral area.

The project, as approved by the County, includes construction of two water tanks on Lot 8, but the tentative map does not show where they will be located and no description is given in the County's approval as to where they will be placed. According to Mitigation Measure #1, they cannot be placed in ESHA.

The County approval does require scenic easements for “portions of the property where sensitive habitat (chaparral and oaks habitat) exists” (condition 17; see also Condition 14), and requires a final map

¹⁰ Griffin, J. R., *Maritime chaparral and endemic shrubs of the Monterey Bay Region*, Madroño, 1978, pp 65-112.



“that excludes all improvements, including water tanks and distribution lines, from the central maritime chaparral habitat on Lot 8” (Mitigation Measure #1). Mitigation Measure #1 also requires temporary exclusionary fencing along the conservation easement boundary, and prohibits removal or disturbance of native chaparral vegetation, grading, roads, animal grazing, and other activities that could adversely affect the habitat. It does allow activities necessary to reduce the potential risk of wildfires, to remove non-native plants, or *“to otherwise ensure the long-term maintenance of the habitat.”*

As conditioned, the conservation easement is to include a 25-foot buffer around the maritime chaparral, however this is not consistent with protection of the long-term maintenance of the habitat. Regulation 20.144.040.B2 prohibits development within 100 feet of ESHA to impact the habitat’s long-term maintenance. Since no building envelopes are shown on the proposed Tentative Subdivision Map, it is difficult to determine if residential structures, construction activities, or associated residential activities within 100 feet of ESHA would impact the long-term maintenance of maritime chaparral habitat on Lot 8. Furthermore, while the County’s approval does require that the site be landscaped using native species consistent with and found in the project area (Condition 42), and allows for the removal of eucalyptus and other non-native species in a manner protective of existing maritime chaparral habitat (Mitigation Measure 1d), it does not prohibit the use of non-native invasive plant species. Invasive, non-native plants have already degraded the quality of the maritime chaparral on site, and without prohibition of such plant species, the project may adversely impact the long-term maintenance of the habitat, inconsistent with LCP policies. Thus the project **raises a substantial issue with regards to protection of environmentally sensitive maritime chaparral habitat.**

The LUP requires that oak woodland on slopes over 25% be left intact, and requires projects be sited to minimize disruption and habitat loss of oak woodland on slopes 25% or less. The biological report indicates that no special status species were found or are expected to occur within the wooded portion of the property, and indicates that the removal of a few small to medium sized oaks to accommodate the project would not be a significant biological impact. The Final EIR (FEIR) states that “up to 21 coast live oak trees along the access road corridor are close enough to the proposed access road that they could require removal or be damaged during road construction.” The County’s approval includes Mitigation Measures #4, 5 and 6, that require detailed grading plans noting possible tree removal of any oak trees over 6” diameter at breast height (dbh), alignment of the access road to minimize tree removal, tree protection measures to be implemented during construction, and 3:1 replacement of any trees that could not be avoided. While the County’s approval does allow for the possibility of tree removal, it specifically requires that grading plans be submitted for review and approval prior to any tree removal, and that the project proponent provide sufficient evidence to the Planning and Building Inspection Department to determine that an exception can be made to remove oak trees greater than 6 inches dbh. It also requires that adjustments to the alignment and width of the road be made to minimize the potential for oak tree removal. Mitigation measure #5 requires that protective measures include wrapping of trunks for trees less than 12 inches dbh, protective fencing around trees greater than 12 inches dbh, bridging or tunneling under roots where exposed, and avoiding soil compaction, parking or stockpiling of materials under the drip lines of trees, and Mitigation Measure #6 requires replacement planting for any trees greater than 6 inches dbh, using a 3:1 replacement ratio. The permit thus appears adequately conditioned to protect oak woodland habitat, consistent with LCP policies.



c. Conclusion

The County's approval allows development (construction of two water tanks and landscaping) within 25 feet of environmentally sensitive maritime chaparral habitat, which may adversely impact the long-term maintenance of this plant community, inconsistent with LCP policies. Thus the project is not inconsistent with LCP ESHA policies, and so **raises a substantial issue with regard to protection of ESHA.**

4. Visual Resources

The FANS and LandWatch, Monterey County appeals contend that the County approval of the project is inconsistent with protection of scenic resources, since the project includes development that may be located in the scenic viewshed, and not adequately screened consistent with viewshed protection policies.

a. Applicable Policies

North County LUP Policy 2.2.1. Key Policy- *In order to protect the visual resources of North County, development should be prohibited to the fullest extent possible in beach, dune, estuary, and wetland areas. Only low intensity development that can be sited, screened, or designed to minimize visual impacts, shall be allowed on scenic hills, slopes, and ridgelines.*

North County LUP Policy 2.2.2.3. *Property containing land on scenic slopes, hills, and ridgelines when proposed for subdivision, should be subdivided so that the lots are situated to allow the highest potential for screening development and access roads from view. Lots and access roads should also be sited to minimize tree removal and visually intrusive grading during development. During the subdivision process, scenic or conservation easements should be required to the fullest extent possible for wooded ridge, hill, and areas of 30% slope or more.*

North County LUP Policy 2.2.2.4. *The least visually obtrusive portion of a parcel should be considered the most desirable site for the location of new structures. Structures should be located where existing topography and vegetation provide natural screening.*

North County LUP Policy 2.2.2.5. *Structures should be located to minimize tree removal, and grading for the building site and access road. Disturbed slopes should be restored to their previous visual quality. Landscape screening and restoration should consist of plant and tree species complementing the native growth of the area.*

North County LUP Policy 2.2.3.1. *The scenic areas of North County, including ... ridges shall be zoned for scenic conservation treatment.*

North County LUP Policy 2.2.3.5. *New overhead utility and high voltage transmission lines that cannot be placed underground should be routed to minimize environmental and scenic impacts.*



b. Analysis of Consistency with Applicable LCP Policies

The North County LUP policies require that low intensity development be allowed on scenic hills, slopes and ridgelines only if it can be sited, screened or designed to minimize visual impacts (LUP key policy 2.2.1), that land containing scenic hills, slopes and ridgelines be subdivided in a way that provides the highest potential for screening development and access roads (LUP 2.2.2.3), that structures be located where existing topography and vegetation provide natural screening (LUP 2.2.2.4), that lots and access roads be sited to minimize tree removal and visually intrusive grading (LUP 2.2.2.5), and that scenic or conservation easements be required over wooded ridges and areas of 30% slope (LUP 2.2.2.3). LUP 2.2.3.5 also provides that new overhead utility and transmission lines be placed underground or routed to minimize environmental and scenic impacts.

As described above, the project proposes subdivision of a 25-acre parcel into 10 lots, with an access road that extends west, from Maher Road to the middle of the site, along the southern property boundary, and then north through the middle of the parcel. The road would be located within a 30-foot wide road and public utilities easement. The project includes 2,000 cy of grading for roadway access and utility development. As previously mentioned, the location of the water tanks has not been established, and no building envelopes are shown on the Tentative Subdivision Map.

According to the Initial study,

Existing topography and vegetation provide substantial visual screening of most of the project site from Maher Road. Only small portions of the project are readily visible from public viewpoints of the project site. The existing single-family house and driveway are the most prominent features as viewed from Maher Road. A dense stand of oak trees beyond the house minimizes views to upper portions of the project site. The project site extends a short way to the west of the ridge, and the trees along the western edge of the project site are visible from San Miguel Canyon Road, and screen the ridge top from view. Strawberry fields on the adjacent property to the west provide a clear view up towards the ridgeline from San Miguel Canyon Road.

While no building envelopes are shown on the Tentative Subdivision Map, the Initial study further notes that:

Project plans include the removal of some of the eucalyptus trees on the project site. If the eucalyptus trees along the western boundary of the project site were removed, there is the potential that the house on Lot 8 could result in ridgeline development as viewed from San Miguel Canyon Road. The other proposed project lots would be screened from public view by dense oak woodland that would not be disturbed. The entry driveway would be somewhat visible from Maher Road, but not out of character with other driveways in the area. The project site is approximately two miles from Royal Oaks County Park, and would be only marginally visible, if visible at all, from the park. The proposed project would not be visible or potentially visible from any other public viewing areas.



As previously stated, the Tentative Subdivision Map does not include any building envelopes, so it is difficult to determine whether or not any actual developments would impact visible resources, inconsistent with LCP policies. The County's approval is conditioned to require a scenic easement over slopes more than 30% (Condition 16), unobtrusive lighting that is harmonious with the local area (Condition 35), a deed restriction recorded on each lot to limit exterior lighting to low voltage fixtures, or for lighting to be screened so as not to be visible from off-site locations (Mitigation Measure #14), underground utilities (Condition 37), and conditions designed to minimize tree removal (Mitigation Measures #1, 3 and 4). And all future development will require approval of a coastal development permit and the County will have to evaluate visual resource impacts at that time.

With regard to potential ridgeline development on Lot 8, the County's approval does require that *"proposed structures on Lot 8 be staked and flagged, prior to approval of building permits, and building design or siting adjusted to prevent ridgeline development."* It also requires that the water tank location be approved by the Planning and Building Inspection Department (Condition 67), that the tank site be landscaped, including land sculpturing and fencing (Condition 68), and painted an earth tone color to blend into the area (condition 69). It is expected that any additional future development would similarly need to be staked and flagged to evaluate visual resource impacts and siting or redesign modifications.

The conditions applied to the permit thus appear adequate to ensure that scenic resources are protected, and so do not appear to raise a substantial issue with regards to LCP requirements.

c. Conclusion

The project as approved by the County is conditioned to protect visual resources consistent with LCP policies; therefore the appeal contentions **do not raise a substantial issue with regards to visual resources**.

5. Zoning Requirements

The FANS and LandWatch appeals also contend that the County approval of the project is inconsistent with zoning requirements, because it allows the creation of parcels less than 2.5 acres in size.

a. Applicable Policies

Zoning Requirements for Low Density Residential zoning designation are located in Section 20.14.060, and include:

20.14.060 SITE DEVELOPMENT STANDARDS.

A. Minimum Building Site - The minimum building site shall be 1 acre unless otherwise approved as part of a clustered residential development.

B. Development Density, Maximum - The maximum development density shall not exceed the acres/unit shown for the specific "LDR" district as shown on the zoning map (e.g. "LDR/2" means an "LDR" district with a maximum gross density of 2 acres/unit).



C. Structure Height and Setback Regulations - The following structure height and setback regulations apply unless superseded by a structure height limit noted on the zoning map (e.g. "LDR/2.5 (24)" would mean a structure height limit of 24 feet), setback requirements when combined with a "B" district, setbacks shown on a recorded final or parcel map, or setback lines on a Sectional District Map.

In a subdivision where a lot or lots have a designated building envelope, the dwelling unit and accessory structures shall be located wholly within the building envelope.

Under the LDR zoning designation, main structures are restricted to a maximum height of 30 feet, and accessory (non-habitable structures are limited to a maximum height of 15 feet. Accessory structures used as barns, stables or farm out buildings are restricted to a maximum height of 30 feet.

b. Analysis of Consistency with Applicable LCP Policies

The Monterey County LCP includes zoning ordinances as part of the LCP's Coastal Implementation Plan (CIP). The site is zoned Low Density Residential (LDR(CZ)), and the maximum density of development is 2.5 acres/unit, with minimum building sites of 1 acre.

The County's approval allows subdivision of the 25-acre site into ten parcels, which provides for an average of 2.5 acres density of development. There is no indication in the LCP that averaging lot sizes is not allowed, and in fact averaging lot sizes over a proposed subdivision is one way to cluster development in order to minimize potential adverse impacts from future development (e.g., to protect habitat, visual or geological resources). In this case, Lots 2, 3, 4, 5, 6, 7, 9 and 10, while less than 2.5 acres in size, are all clustered around the middle of the parcel, in the existing area that had been cleared for berry fields, reducing potential impact that future development might have to oak woodland that exists mainly on Lots 1 and 5, and maritime chaparral habitat that exists on Lot 8. Additionally, while some of the parcels are smaller than 2.5 acres, they all meet the minimum building size of one acre. Two of the parcels are larger than the 2.5 acre maximum (Lot 1 is 5.3 acres, and Lot 8 is 7.8 acres), but County approval requires that the project proponent rezone Lots 1 and 8 to LDR/2.5-B-6 prior to completion of the final map, which would prevent further subdivision (Condition 70). Finally, all lots meet the minimum area required for development of septic systems, pursuant to CIP Regulation 20.144.070.D.14.



c. Conclusion

The project as approved by the County allows for a 25-acre parcel to be divided into 10 lots, with an average density of development that is in conformance with the maximum allowed, and is conditioned to limit further subdivision of the two large lots (Lot 1 and Lot 8) consistent with LCP policies. The subdivision meets minimum building site and the minimum area needed for development of septic systems. The subdivision, as conditioned by the County, is thus consistent with zoning requirements of the LCP, and so the appeal contentions **do not raise a substantial issue with regards to zoning requirements.**

6. Procedural Issues

The FANS and LandWatch appeals raise a concern that in order to provide adequate public hearing opportunities, the Planning Commission was the appropriate authority to review the project following completion of the Final EIR (FEIR), and was required to make a recommendation to the Board of Supervisors (BOS), prior to the BOS ruling on the project. Instead, the BOS certified the EIR and approved the project without any recommendation from the Planning Commission, which had previously recommended denial of the project.

Coastal Implementation Plan (CIP) Section 20.82.030.B states that

The Planning Commission shall act as the recommending body to the Board of Supervisors when said Board is the Appropriate Authority for the Combined Development Permit. Said Board shall not act on a Combined Development Permit without prior review and recommendation of the Planning Commission on both the environmental and land use issues. The Planning Commission recommendation shall be made only after public hearing by the Planning Commission.

As described in the LandWatch Monterey County appeal, initially a Mitigated Negative Declaration had been proposed on the Sunridge Views project. The Planning Commission had recommended that the Board deny the project and not certify the Mitigated Negative Declaration. The Board of Supervisors ordered the preparation of an Environmental Impact Report, and a draft EIR (DEIR) was circulated for review and comment in December 2003. The DEIR noted areas of known controversy, which included concerns about water supplies and water quality, due to serious overdraft conditions and nitrate contamination in nearby wells. A Final EIR (FEIR) was released in June 2004, and a public hearing on the project, as well as certification of the FEIR went immediately to the Board of Supervisors, without having been reviewed by the Planning Commission, despite requests by FANS that the item first be sent to the Planning Commission for review and recommendation to the Board.

Although an additional hearing by the Planning Commission, after the preparation of the EIR, would have provided for additional public participation, particularly concerning the additional environmental and land use evidence developed in the EIR after the Planning Commission's first review, the Planning Commission did, technically, provide a recommendation to the BOS on the project. In addition, the



BOS made the final decision on the project as the “Appropriate Authority,” consistent with IP section 20.82.030.B. Thus, no substantial issue is raised by this claim.

